

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

I. PROCEDURAL BACKGROUND

An initial hearing on a petition for violation of supervised release was held before the undersigned Magistrate Judge on February 15, 2006. The United States was represented by Assistant United States Attorney J. Tate London, and the defendant by Mr. Robert W. Goldsmith. The proceedings were recorded on cassette tape.

The defendant had been sentenced on or about November 1, 2004, by the Honorable Marsha J. Pechman on charges of Making, Uttering, and Possessing Counterfeit Securities. Defendant was sentenced to serve 24 months in custody to run concurrently with an undischarged state-court sentence in Orange County Superior Court, with credit for time served from the date defendant entered into California custody on June 20, 2003, to be followed by three years of supervised release.

01 In addition to the standard conditions of supervised release, which include compliance
02 with all local, state, and federal laws, special conditions of supervised release were imposed.
03 These special conditions included, but were not limited to, substance-abuse treatment program,
04 no firearm possession, consent to search, no new credit charges, no possession of identification
05 other than in his legal name, financial disclosure, and restitution.

06 In a Petition for Warrant of Summons and a Violation Report, both dated October 25,
07 2005, U.S. Probation Officer Margaret K. Kellow asserted the following violations of the
08 conditions of supervised release by the defendant:

09 (1) Failing to report to the probation office as directed on or about August 23, 2005,
10 in violation of standard condition number 2; and

11 (2) Failing to notify the probation officer at least 10 days prior to any change of
12 residence after August 23, 2005, in violation of standard condition number 6.

13 The defendant admitted to violation number 2, and waived any rights to an evidentiary
14 hearing as to whether it occurred (Dkt. No. 207). The defendant denied alleged violation
15 number 1 and requested an evidentiary hearing on the alleged violation.

16 The hearing on alleged violation number 1 took place on February 27, 2006.

17 **II. FINDINGS ON FEBRUARY 27, 2006, HEARING**

18 Mr. Michael Banks, a Senior United States Probation Officer testified as did the
19 defendant Derrick Catlett. Based on the testimony offered, I find the following facts to have
20 occurred:

21 On August 23, 2005, the defendant initiated a call to the United States Probation Service
22 to let them know he had been released from state custody. He asked for his assigned probation
23 officer, Margaret Kellow. However, Officer Kellow was not in the office on that day, so he was
24 placed in contact with Officer Banks, who was the duty officer. Officer Banks instructed the
25 defendant to appear at the U.S. Probation Office. He told the defendant to be there by 4:00 p.m.
26 The defendant gave his contact phone information to Officer Banks.

01 The defendant did not appear by 4:00 p.m. He understood that he should be there before
02 the end of the day, which he interpreted as 5:00 p.m. He arrived at the federal courthouse
03 around 4:40 p.m. He was advised by the Court Security Officers (“CSOs”) at the entrance of
04 the courthouse that the Probation Office was closed. The Probation Office reception area closes
05 at 4:30 p.m., but there is a bell on the outside of the office that can be used to get someone’s
06 attention after 4:30 p.m. Upon hearing from the CSOs at the courthouse entrance that the
07 Probation Office was closed, the defendant left.

8 The same day, or the day thereafter, the defendant called his State Department of
9 Corrections (“DOC”) Probation Officer. However, he did not re-initiate contact with either
10 Officer Banks or Kellow. He had furnished the Probation Office with his telephone contact
11 information, but no contact was initiated by the U.S. Probation Office until October 21, 2005.
12 By this time, when Officer Kellow attempted to call the defendant, he had moved. This is the
13 subject of violation number 2, to which defendant entered an admission on February 15, 2006
14 (Dkt. No. 207).

15 It appears from the evidence that the defendant attempted to comply with the directive
16 from Officer Banks. In light of his actions initiating contact with Officer Banks, arriving at the
17 federal courthouse on the date directed, albeit late, leaving his telephone contact information,
18 and contacting his DOC probation officers, it does not appear that the defendant was acting
19 willfully in his actions. Nevertheless, Officer Banks instructed the defendant to appear by 4:00
20 p.m., and had the defendant done so, he would have been processed properly.

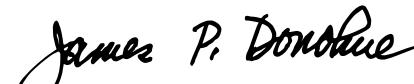
III. RECOMMENDATION

22 I therefore recommend that the Court find that the defendant committed violation
23 number 1 as alleged, namely, that he failed to report to the probation office as directed on or
24 about August 23, 2005, in violation of the standard condition number 2. A disposition hearing
25 on violation number 1, if this recommendation is adopted, and on admitted violation number
26 2 remains to be set before the Honorable Marsha J. Pecham.

01 Objections to this recommendation should be filed with the Clerk (not mailed directly
02 to Judge's chambers) and served on opposing parties within **ten (10)** days of the date of entry
03 of this Report and Recommendation. Failure to file objections within the specified time waives
04 the right to appeal any order by the District Court adopting this report and recommendation.

05 Pending a final determination by the Court, the defendant has been detained.

06 DATED this 1st day of March, 2006.

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09 JAMES P. DONOHUE
10 United States Magistrate Judge

11 cc: District Judge: Honorable Marsha J. Pechman
12 AUSA: Mr. J. Tate London
13 Defendant's attorney: Mr. Robert W. Goldsmith
14 Probation officer: Ms. Margaret K. Kellow
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